

WIA DISCRIMINATION COMPLAINT POLICY

PURPOSE

To communicate the requirement of recipients to adopt and publish procedures providing for the prompt and equitable resolution of complaints alleging violations of WIA nondiscrimination and equal opportunity provisions.

REFERENCES

P.L. 105-220, Workforce Investment Act, Section 188, (a) (2), (4), (5).

29 CFR Part 37 , Department of Labor, Office of the Secretary, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act: Final Rule, November 12, 1999.

POLICY STATEMENT

Recipients shall ensure nondiscrimination and equal opportunity in admission or access to, opportunity or treatment in, or employment, in the administration of or in connection with any program or activity funded in whole or in part with WIA funds. Any person, who believes he or she has been subjected to discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship, or participation in WIA, has the right to file a complaint within 180 days of the alleged discrimination.

The person has the right to file a complaint with the recipient's Equal Opportunity Officer, or directly with the **Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C. 20210**. If the complainant elects to file a complaint with the recipient, the recipient shall have 90 days to process a complaint and issue a decision. If the recipient does not provide a written decision within 90 days of the filing of the complaint, the complainant need not wait for a decision to be issued, but may file a complaint with CRC within 30 days of the expiration of the 90-day period. If a complainant is not satisfied with the recipient's resolution, the complainant may file a complaint with CRC. Such complaint must be filed within 30 days of the date the complainant received notice of the recipient's proposed resolution.

All WIA recipients within the Commonwealth of Virginia shall designate an Equal Opportunity Officer¹ who will be responsible for adopting and publishing complaint procedures, and ensuring that they are followed. To communicate the discrimination complaint policy, "Equal Opportunity Is The Law" posters in English and

¹ Training and service providers are not required to designate an Equal Opportunity Officer. The LWIA EO Officer is responsible for ensuring training provider compliance with the nondiscrimination and equal opportunity requirements of WIA.

Spanish shall be placed in prominent locations, which are accessible to applicants, eligible applicants, participants, terminees, applicants for employment and employees, applicants for funding and other interested parties. The poster contains a nondiscrimination and equal opportunity statement, as well as information about filing a complaint.

Recipients shall include in orientations to employees and/or participants a discussion of their rights under the nondiscrimination and equal opportunity provisions of WIA and the right to file a complaint of discrimination with either the recipient or CRC. Communication of policy shall be documented on a notification instrument for employees and applicants/participants, and retained in individuals' files. Recipients shall ensure audiotape access to "Equal Opportunity Is The Law" for individuals with visual disabilities, as well as persons who have difficulty reading and/or comprehending written materials.

Where a significant portion of the eligible population may need service or information in a language other than English or Spanish, the recipient shall provide the initial notice and other materials in the needed language to the extent possible.

INTIMIDATION AND RETALIATION PROHIBITED

Consistent with 29 CFR 37.11, intimidation and retaliation against individuals for having filed a complaint; opposing a prohibited practice; furnishing information; assisting or participating in any manner in an investigation, review, hearing or any other activity related to administration of, exercise or authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of WIA is prohibited. In accordance with 29 CFR 37.11, complaints may be filed alleging intimidation and retaliation.

FILING A DISCRIMINATION COMPLAINT AT THE RECIPIENT LEVEL

A complaint of discrimination may be filed with the respective LWIA EO Officer or the State WIA EO Officer.² A complaint must be filed within 180 days of the alleged discrimination. The complaint may be filed by the individual or on behalf of the individual by an authorized representative. A complaint must be filed in writing and signed by the complainant or by his or her authorized representative. It is recommended (but not required) that the complaint be filed on USDOL Complaint Information Form.

www.vec.state.va.us/pdf/jscomplaint.pdf English
www.vec.state.va.us/pdf/jsspancomplaint.pdf Spanish

² Complaints filed with the State EO Officer against an LWIA will be referred to the Local-level EO Officer.

The complaint document must contain the following information:

- complainant's name and address, or other means by which the complainant may be contacted;
- identification of individual(s) and/or organization(s) responsible for the alleged discrimination;
- a description of the complainant's allegations to (1) determine recipient's jurisdiction of the complaint, (2) timeliness of the complaint, (3) specific prohibited basis or bases of the alleged discrimination (i.e., race, sex, etc.) and (3) apparent merit of the complaint.

Each Local-level Equal Opportunity Officer is responsible for ensuring publication of the name, title, address, telephone number and TDD number of the EO Officers or other individuals responsible for receiving complaints.

TIME FRAMES

Recipients shall notify complainants, in writing, of the specific time frames for processing a complaint of discrimination as follows:

- If the complainant elects to file with the recipient, the recipient shall have 90 days to process the complaint and provide a determination. Virginia's discrimination complaint process includes 60 days for the recipient to investigate and 30 days for a review at the State level, if warranted.
- If the complainant elects to file with both CRC and the recipient, the complainant shall be informed that the recipient has 90 days to process the complaint and that CRC shall not investigate the complaint until the 90-day period has expired.
- If by the end of 90 days from the date on which the complaint was filed the recipient fails to issue a Notice of Final Action, the complainant may file a complaint with the Director of CRC within 30 days of the expiration of the 90-day period.
- Immediately upon determining that it does not have jurisdiction the recipient's EO Officer shall notify the complainant in writing that he or she does not have jurisdiction over the complaint, including reasons for the determination and the complainant's right to file with the Director of CRC within 30 days of the notice.
- The complainant shall be notified that if the complaint is not filed within 180 days of the alleged discrimination or a complaint has not been filed with CRC within 30 days of the receipt of the recipient's determination or expiration of the 90-day period, the Director of CRC may extend the time limits for good cause shown.

PROCESSING A DISCRIMINATION COMPLAINT

It is the responsibility of the LWIA EO Officer to determine which One-Stop entity has jurisdiction over the complaint. Upon determining that a One-Stop partner has jurisdiction, the complaint shall be recorded in the complaint log (see Recordkeeping) and referred to the appropriate One-Stop partner for resolution in accordance with that partner's complaint processing procedures.³ Where the LWIA EO Officer has jurisdiction for a complaint, he or she shall notify complainants, in writing, of the specific time frames for processing a discrimination complaint.

If the complainant elects to file with the recipient (LWIA), the recipient shall have 90 days to process the complaint and provide a determination. During the 90-day period complainants may elect to participate in mediation.⁴ The choice whether to use mediation or the customary investigative process rests with the complainant.

Requests for mediation shall be referred to the State EO Officer. If the complainant elects mediation and there is no resolution, the complaint will be referred for investigation. If mediation is not elected the complaint shall be investigated in accordance with the LWIA's complaint processing procedures. Service providers must also follow the LWIA's complaint processing procedures. Such complaint procedures shall include the following elements:

- Initial, written notice to the complainant, and a notice that the complainant has the right to be represented in the complaint process,
- A written statement provided to the complainant that contains a list of the issues raised in the complaint and, for each issue, a statement whether the recipient will accept or reject the issue, and the reasons for each rejection,
- A period for fact-finding or investigation of the issues,
- A period during which the recipient attempts to resolve the complaint through mediation, and
- A written Notice of Final Action provided to the complainant within 90 days of the date on which the complaint was filed, that contains the recipient's determination.

³ Complaints filed against a One-Stop partner on a basis covered under WIA, but not covered by that partner shall be referred to CRC.

⁴ See VEC Mediation Program Guidelines for specific information on the mediation process.

DISCRIMINATION COMPLAINT INVESTIGATION PROCEDURE

Within 90 days of the date a discrimination complaint is filed, an investigation shall be conducted by the respective recipient's EO officer or by a designee under the direction of the EO Officer consistent with the Discrimination Complaint Investigation Procedure. This procedure shall be used for any discrimination complaint for which a written and signed complaint has been received. (The procedure and an Investigation Worksheet to be used by EO Officers are attached.)

All activities and records related to an investigation shall ensure the confidentiality of the complaint and any resulting actions. The investigation must be managed in a manner that does not have an adverse effect on the complainant or any other party related to the complaint.

RESPONDING TO A DISCRIMINATION COMPLAINT

The recipient's EO Officer shall sign the investigation, including determination and recommendation. The recipient (LWIA) shall provide a written determination (Notice of Final Action) of the complaint and offer resolution within 90 days of the date the complaint was filed and for each issue filed: 1) include the recipient's decision on the issue and an explanation of the reasons underlying the decision; 2) description of the way the parties resolved the issue; and 3) notice that the complainant has a right to file a complaint with the Director of CRC within 30 days of the Notice of Final Action if he/she is dissatisfied with the recipient's final action on the complaint.

Determinations: The LWIA EO Officer shall determine at the conclusion of the investigation of a complaint whether there is reasonable cause to believe that a violation occurred. If an investigation results in a reasonable cause finding, the LWIA EO Officer shall submit the signed investigative report including determination and recommendation to the State EO Officer for review within 60 days of the filing date. Based on review of the determination, the State EO Officer will determine if further review by the Attorney General's Office and the VEC Commissioner, or his designee is warranted. If the VEC concurs with the determination, the LWIA EO Officer shall issue a written determination. The determination shall notify the complainant of the specific findings; the proposed remedial or corrective action and the time in which corrective action must be completed.

Where a no cause finding is made, the complainant shall be notified in writing. Such a determination represents the final action of the LWIA EO Officer. The LWIA EO Officer shall notify the complainant of his or her right to file a complaint (not an appeal) with the CRC, if he or she believes the LWIA resolution is unsatisfactory. The complainant shall be informed that this right must be exercised within 30 days.

CORRECTIVE ACTION

If discrimination is found through the process of a complaint investigation, the respondent shall be requested to voluntarily comply with corrective action(s) or conciliation agreement to correct the discriminatory actions or conditions.

Actions to correct discrimination deficiencies may include any of the following:

- back pay, or other monetary relief (Federal funds shall not be used to provide monetary relief);
- hire or reinstatement;
- promotion;
- benefits or other services denied; and
- any other remedial or affirmative relief such as outreach, recruitment and training to ensure equal opportunity.

RECORDKEEPING

Recipients shall maintain an automated or manual log of discrimination complaints to include, name and address of complainant; the basis of the complaint, i.e., race, sex, age, etc., a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. (A sample log is attached.)

Records pertaining to discrimination complaints, investigations or any other such actions shall be retained for a minimum of three (3) years from the date of resolution.

Information pertaining to the identity of any persons providing information related to, or assisting in, an investigation or a compliance review shall be maintained in a confidential manner to the extent possible. In the event that it is necessary that a person's identity be disclosed, the person(s) shall be protected from retaliation.

Attachments :

EO Contacts for WIA State Partners
Discrimination Complaint Investigation Procedure
Discrimination Complaint Investigation Worksheet
Sample Discrimination Complaint Log
VEC Mediation Program Guidelines